Reserved

IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL

WRIT PETITION NO.38(MS) OF 2006

1. Amba Prasad Pandey,
   S/o late Shri Bhagwat Prasad,
   R/o Dharamshala Trust, 5, Ghat Road,
   Rishikesh, District-Dehradun.
2. Narendra Atrey,
   S/o late Shri Bhagwat Prasad,
   R/o Dharamshala Trust, 5, Ghat Road,
   Rishikesh, District-Dehradun.
3. Anil Atrey,
   S/o late Shri Bhagwat Prasad,
   R/o Dharamshala Trust, 5, Ghat Road,
   Rishikesh, District-Dehradun.
4. Smt. Bimla,
   W/o late Shri Bhagwat Prasad,
   R/o Dharamshala Trust, 5, Ghat Road,
   Rishikesh, District-Dehradun.
5. Ved Prakash,
   S/o late Pandit Ram Prasad,
   R/o Dharamshala Trust, 5, Ghat Road,
   Rishikesh, District-Dehradun.
6. Smt. Pushpa,
   W/o late Shri Laxmi Narain,
   R/o Dharamshala Trust, 5, Ghat Road,
   Rishikesh, District-Dehradun.
7. Rajiv Atrey,
   S/o late Shri Laxmi Narain,
   R/o Dharamshala Trust, 5, Ghat Road,

Rishikesh, District-Dehradun.

8. Dharmendra Atrey,
S/o late Shri Laxmi Narain,
R/o Dharamshala Trust, 5, Ghat Road,
Rishikesh, District-Dehradun.

9. Pankaj Atrey,
S/o late Shri Laxmi Narain,
R/o Dharamshala Trust, 5, Ghat Road,
Rishikesh, District-Dehradun.

10. Km. Bhuwneshwari Atrey,
D/o late Shri Laxmi Narain,
R/o Dharamshala Trust, 5, Ghat Road,
Rishikesh, District-Dehradun.

11. Km. Anju Atrey,
D/o late Shri Laxmi Narain,
R/o Dharamshala Trust, 5, Ghat Road,
Rishikesh, District-Dehradun. .....Petitioners.

Versus

1. Civil Judge (Senior Division)
Dehradun.

2. Dharamshala Shambhubara Trust,
Rishikesh, 5 Ghat Road, Rishikesh,
District-Dehradun, through its trustee,
Prabhat Kumar Kapoor.

3. Kailash Chand Kapoor,
S/o late Shri Padam Nath Kapoor,
R/o 5, Ghat Road, Rishikesh,
District-Dehradun.

4. Prabhat Kumar Kapoor,
S/o late Shri Padam Nath Kapoor,
R/o 5, Ghat Road, Rishikesh,

District-Dehradun.

5. Dr. Raghunath Kapoor,
S/o late Shri Padam Nath Kapoor,
R/o 5 Ghat Road, Rishikesh,
District-Dehradun.

6. Yogeshwar Nath Kapoor,
S/o late Shri Rishikesh Kapoor,
R/o 5 Ghat Road, Rishikesh,
District-Dehradun.

7. Shyam Kapoor,
S/o late Shri Madhusudan Kapoor,
R/o 5 Ghat Road, Rishikesh,
District-Dehradun.

8. Rakesh Kumar Kapoor,
S/o late Shri Janardhan Pradhan,
R/o 5 Ghat Road, Rishikesh,
District-Dehradun. .....Respondents.

Dated: 30.08.2006

Hon'ble Rajesh Tandon, J.

Heard Sri Ramji Srivastava, Advocate for the petitioner, Sri Alok Singh, Sr. Advocate, assisted by Sri K.N. Joshi, Advocate for the respondents no. 2 to 8 and Standing Counsel for the respondent no. 1.

2. By the present writ petition, the petitioners have prayed for a writ of Certiorari quashing the order dated 06.01.2006 (Annexure No. 5 to the writ petition) passed by the Civil Judge (Senior Division), Dehradun/respondent no. 1, whereby the amendment application (Paper No. 79A/1) filed by the petitioners/defendants in Original Suit No. 762 of 2002

Shambhubara Dharamshala and others Vs. Amba Prasad Atrey and others has been rejected.

3. No writ petition is maintainable under Article 226/227 of the Constitution of India. However liberty is given to the petitioner to avail the alternative remedy, if so advised. However, the Presiding Officer is directed to expedite the suit as four years have already passed after the filing of the suit.

4. Subject to above, writ petition is dismissed. No order as to costs. Stay order dated 18.01.2006 is vacated.

30.08.2006 **(Rajesh Tandon, J.)**

Rathour